

ATTACHMENT 5

This Attachment provides information and/or requirements associated with DOE O 483.1A as well as information and/or requirements applicable to contracts in which the associated CRD (Attachment 1 to DOE O 483.1A) is inserted.

MODEL SHORT FORM CRADA

This Model Short form CRADA is designed to be offered to entities as means for streamlining and simplifying the CRADA process for certain circumstances. In order to ensure expedited CRADA development and approval, this document must be adopted in its entirety, as written, by both/all parties with no exceptions. The language of this document is pre-approved by DOE; however, the DOE Field Office can approve minor changes specific to a Laboratory or other facility. The goal is for uniformity across the DOE complex with this CRADA with limited differences between Laboratories and other facilities.

The Short Form CRADA may be offered to entities that meet the following criteria:

- a) The Participant should be clearly advised that this CRADA must be adopted in its entirety, as written, by both/all parties and, at the same time, advised of the alternative to use the DOE Model CRADA if the total terms of the Short Form CRADA are not agreeable.
- b) The dollar value of the entire project (including amendments) does not exceed \$500,000. This dollar value may be periodically adjusted by the HQ Office of Procurement Policy (MA).

The Short Form CRADA package will be subject to the same process used for DOE Model CRADA package review and approval at the local DOE Field Offices.

Guidance for the DOE Model CRADA applies to clauses unchanged in the Short Form CRADA.

For each project, a Statement of Work (SOW) is required that details the nature, scope, roles, responsibilities, and costs of activities to be conducted by both parties together with an estimated timeline for completion of identified tasks. The SOW will be incorporated into the CRADA as Annex A.

Financial Considerations:

- 1) Federal Administrative Charge is applicable to entities as provided for by DOE Order 522.1.
- 2) In Article II paragraph D, DOE's Cognizant Site CFO's per Chapter XIII of the Financial Management Handbook will provide approval/concurrence before the DOE Contracting Officer approves any advance payments of less than 60 days.

- 3) All of the funding provisions/requirements in Attachment 4 apply to the DOE Short Form CRADA. Please see Attachment 4 for more guidance on the following provisions:
- a) Requirements for SBIR/STTR awards;
 - b) Full funding requirements for awards that are \$25,000 or less or where the work will be completed in 60 days or less;
 - c) Additional funding requirement for termination costs or other expenses for individual projects as determined by the Field CFOs;
 - d) Statement that no budgetary resources shall be utilized to fund work for CRADA partners; and
 - e) Exceptions to funding requirements as provided for in Chapter 13 of DOE's Financial Management Handbook.

The Department of Energy has opted to utilize the following agreement, which is uniform across the Departmental facilities, for small value transactions. Except for minor modifications to the terms of this agreement made by CONTRACTOR, most changes will require approval by the DOE Contracting Officer, WHICH WILL LIKELY DELAY THE START DATE OF THE PROJECT. If substantive changes are required, the DOE Model CRADA may be more appropriate due to the increased flexibility such agreements afford.

STEVENSON-WYDLER (15 USC 3710a)

**SHORT-FORM COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
(hereinafter "CRADA") NO. _____**

BETWEEN

under its U.S. Department of Energy Contract

No. . (Hereinafter "Contractor")

AND

_____ **(hereinafter "Participant") both**

being hereinafter jointly referred to as the "Parties"

ARTICLE I: DEFINITIONS

A. "Government" means the United States of America and agencies thereof.

- B. "DOE" means the Department of Energy, an agency of the United States of America.
- C. "Contracting Officer" means the DOE employee administering the Contractor's DOE contract.
- D. "Generated Information" means information produced in the performance of this CRADA.
- E. "Proprietary Information" means information which is developed at private expense outside of this CRADA, is marked as Proprietary Information, and embodies (i) trade secrets or (ii) commercial or financial information which is considered privileged or confidential under the Freedom of Information Act (5 USC 552 (b)(4)).
- F. "Protected CRADA Information" means Generated Information which is marked as being Protected CRADA Information by a Party to this CRADA and which would have been Proprietary Information had it been obtained from a non-federal entity.
- G. "Subject Invention" means any invention of the Contractor or Participant conceived of or first actually reduced to practice in the performance of work under this CRADA.
- H. "Intellectual Property" means patents, trademarks, copyrights, mask works, Protected CRADA Information and other forms of comparable property rights protected by Federal law and other foreign counterparts.

ARTICLE II: STATEMENT OF WORK, TERM, FUNDING AND COSTS

- A. Annex A is the Statement of Work.
- B. The effective date of this CRADA shall be the latter date of (1) the date on which it is signed by the last of the Parties or (2) the date on which it is approved by DOE. The work to be performed under this CRADA shall be completed within ___ months/years from the effective date.
- C. The Participant's estimated contribution is \$_____, which includes \$_____ funds-in. The Government's estimated contribution, which is provided through Contractor's contract with DOE, is \$_____, subject to available funding.
- D. [Reserve paragraph if Participant is not providing funding to Contractor.] For CRADAs that include (non-Federal) funding on a funds-in basis, the Participant shall provide Contractor, prior to any work from being performed, a budgetary resource sufficient to cover the anticipated work that will be performed during the first billing cycle. In addition, the Participant shall provide 60 days of additional funding to ensure that funds remain available for project during subsequent billing cycles. Failure of Participant to provide the necessary advance funding is cause for termination of this CRADA in accordance with the Termination article of this CRADA. A billing cycle is the period of time between billings, usually 30 days. The billing cycle is complete when the customer is billed for services rendered.

ARTICLE III: PERSONAL PROPERTY

Any tangible personal property produced or acquired in conducting the work under this CRADA shall be owned by the Party paying for it. There will be no jointly funded property. Personal property shall be disposed of as directed by the owner at the owner's expense.

ARTICLE IV: DISCLAIMER:

THE GOVERNMENT, THE PARTICIPANT, AND THE CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS CRADA, OR THE OWNERSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT. NEITHER THE GOVERNMENT, THE PARTICIPANT, NOR THE CONTRACTOR SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

ARTICLE V: PRODUCT LIABILITY

Except for any liability resulting from any negligent acts, or willful misconduct or omissions of Contractor or Government, Participant agrees to hold harmless the Government and the Contractor for all damages, cost and expenses, including attorney's fees, arising from personal injury or property damage as a result of the making, using, or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees, which was derived from the work performed under this CRADA.

ARTICLE VI: RIGHTS TO SUBJECT INVENTIONS

The Parties agree to promptly disclose in writing to each other every Subject Invention in sufficient detail to comply with the provisions of 35 USC §112 well before any statutory bars may arise under 35 USC §102. Each Party shall have the first option to retain title to any of its Subject Inventions. If a Party elects not to retain title to any of its Subject Inventions, then the other Party shall have the option of electing to retain title to such Subject Inventions under this CRADA. The Participant has the option to choose an exclusive license, for reasonable compensation, in a pre-negotiated field of use to the Contractor's Subject Inventions.

The Parties acknowledge that the DOE may obtain title to each Subject Invention reported under this Article for which a patent application is not filed, a patent application is not prosecuted to issuance, or any issued patent is not maintained by either Party to this CRADA. The Government shall retain a nonexclusive, non-transferable, irrevocable, paid-up license to practice, or to have practiced, for or on its behalf all Subject Inventions throughout the world.

For Subject Inventions conceived or first actually reduced to practice under this CRADA which are joint Subject Inventions made by the Contractor and the Participant, title to such Subject Inventions shall be jointly owned by the Contractor and the Participant.

The Parties acknowledge that the DOE has certain march-in rights to any Subject Inventions in accordance with 48 CFR 27.304-1(g) and 15 USC 3710a(b)(1)(B) and (C).

ARTICLE VII: RIGHTS IN DATA

A. The Parties and the Government shall have unlimited rights and each of them shall have a right to use all Generated Information produced by, or information provided to, the Parties under this CRADA which is not marked as being Protected CRADA Information or Proprietary Information.

B. Proprietary Information:

Each Party agrees to not disclose properly marked Proprietary Information provided by the other Party to anyone other than the providing Party without the written approval of the providing Party, except to Government employees who are subject to 18 USC 1905.

C. Protected CRADA Information:

Each Party may designate and mark as Protected CRADA Information (PCI) any qualifying Generated Information produced by its employees. For a period of ___ years [not to exceed five years] from the date it is produced, the Parties agree not to further disclose such PCI except as necessary to perform this CRADA or as requested by the DOE Contracting Officer to be provided to other DOE facilities for use only at those DOE facilities with the same protection in place and marked accordingly. Government employees who are subject to 18 USC 1905 may have access to PCI.

D. Cessation of Obligations Regarding PCI and Proprietary Information:

The obligations relating to the disclosure or dissemination of Protected CRADA Information and Proprietary Information shall end if any such information becomes known without fault of either party, or if such information is developed independently by a Party's employees who had no access to the PCI or Proprietary Information.

E. Copyright:

The Parties may assert copyright in any of their Generated Information. The Parties hereby acknowledge that the Government or others acting on its behalf shall retain a nonexclusive, royalty-free, worldwide, irrevocable, non-transferable license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, all copyrightable works produced in the performance of this CRADA, subject to the restrictions this CRADA places on publication of Proprietary Information and Protected CRADA Information.

[This paragraph can be deleted if no software is produced] If a Party copyrights computer software produced in the performance of this CRADA, the Party will provide the source code, object code, and expanded abstract, and the minimum support documentation needed by a competent user to understand and use the software to DOE's Energy Science and

Technology Software Center (ESTSC) via www.osti.gov/estsc. The Party shall inform ESTSC when it abandons or no longer commercializes the computer software. Until such notice to ESTSC, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. (narrow license) After the Party owning the Computer Software abandons or no longer commercializes the Computer Software, the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. (broad license)

ARTICLE VIII: U.S. COMPETITIVENESS

The Parties agree that a purpose of this CRADA is to provide substantial benefit to the U.S. economy.

- A. In exchange for the benefits received under this CRADA, the Participant therefore agrees to the following:
1. Products embodying Intellectual Property developed under this CRADA shall be substantially manufactured in the United States, and
 2. Processes, services, and improvements thereof which are covered by Intellectual Property developed under this CRADA shall be incorporated into the Participant's manufacturing facilities in the United States either prior to or simultaneously with implementation outside the United States. Such processes, services, and improvements, when implemented outside the United States, shall not result in reduction of the use of the same processes, services, or improvements in the United States.
- B. The Contractor agrees to a U.S. Industrial Competitiveness clause in accordance with its prime contract with respect to any licensing and assignments of its Intellectual Property arising from this CRADA, except that any licensing or assignment of its intellectual property rights to the Participant shall be in accordance with the terms of paragraph A of this Article.

ARTICLE IX: EXPORT CONTROL

EACH PARTY IS RESPONSIBLE FOR ITS OWN COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS. EXPORT LICENSES OR OTHER AUTHORIZATIONS FROM THE U.S. GOVERNMENT MAY BE REQUIRED FOR THE EXPORT OF GOODS, TECHNICAL DATA OR SERVICES UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT EXPORT CONTROL REQUIREMENTS MAY CHANGE AND THAT THE EXPORT OF GOODS, TECHNICAL DATA OR SERVICES FROM THE U.S. WITHOUT AN EXPORT LICENSE OR OTHER APPROPRIATE GOVERNMENTAL AUTHORIZATION MAY RESULT IN CRIMINAL LIABILITY.

ARTICLE X: REPORTS AND ABSTRACTS

The Parties agree to produce the following deliverables: an initial abstract suitable for public release; and a final report, to include a list of Subject Inventions. It is understood that the Contractor has the responsibility to provide this information at the time of its completion to the DOE Office of Scientific and Technical Information. The Participant agrees to provide the above information to the Contractor to enable full compliance with this Article.

The Parties agree to submit, for a period of five years from the expiration of this CRADA and, upon request of DOE, a non-proprietary report no more frequently than annually on the efforts to utilize any Intellectual Property arising under the CRADA.

Use of the name of a Party or its employees in any promotional activity, with reference to this CRADA, requires written approval of the other Party.

ARTICLE XI: FORCE MAJEURE

Neither Party will be liable for unforeseeable events beyond its reasonable control.

ARTICLE XII: DISPUTES

The Parties shall attempt to jointly resolve all disputes arising from this CRADA. In the event a dispute arises under this CRADA, the Participant is encouraged to contact Contractor's Technology Partnership Ombudsman in order to further resolve such dispute before pursuing third-party mediation or other remedies. If the Parties are unable to jointly resolve a dispute within a reasonable period of time, they agree to submit the dispute to a third-party mediation process that is mutually agreed upon by the Parties. To the extent that there is no applicable U.S. Federal law, this CRADA and performance thereunder shall be governed by the laws of the State of _____, without reference to that state's conflict of laws provisions.

ARTICLE XIII: ENTIRE CRADA, MODIFICATIONS AND TERMINATION

This CRADA with its annexes contains the entire agreement between the Parties in performing the research described in the Statement of Work (Annex A) and becomes effective on the later date of either the date the last Party signs the document or receipt of advance funding, if any. Any agreement to materially change any terms or conditions of the CRADA and annexes shall be valid only if the change is made in writing, executed by the Parties hereto, and approved by DOE.

This CRADA may be terminated by either Party with _____ days written notice to the other Party. If Article II provides for advance funding, this CRADA may also be terminated by the Contractor in the event of failure by the Participant to provide the necessary advance funding. Each Party will be responsible for its own costs arising out of or as a result of this termination. The obligations of any clause of this CRADA that were intended to survive the expiration of the period of performance, for example, confidentiality, use and/or non-disclosure obligations, shall also survive any termination of this CRADA.